IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

WP(C).No. 34521 of 2006(I)

OS.93/2003 of MUNSIFF COURT, PAYYANNUR
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PETITIONER:

P.V.KUNHIKANNAN, AGED 62 YEARS,
S/O.KANNAN, PUTHIYADATH VEETTIL, KUTTOOR
AMSOM DESOM, KUTTOOR P.O., KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:
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1. ATHIKKAL SUHRABI, D/O.MOIDHEEN,
KUTTY MASTER, KUTTUR AMSOM DESOM,
KUTTUR P.O., KANNUR DISTRICT.

2. ATHIKKAL SHARAFUDHIN, S/O.SUHARABI,
KUTTUR AMSOM DESOM, KUTTUR P.O., KANNUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.34521 OF 2006

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DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff in O.S.93 of 2003 on the file of Munsiff Court, Payyannaur. Respondents are the defendants. The suit is one for injunction. The plaint was subsequently got amended by petitioner. Defendants filed an additional written statement. In the additional written statement, defendants raised a contention that the property jointly belonged to the first respondent and her children and suit is bad for non joinder of the children. Petitioner thereafter filed two applications, one to implead the children of the first respondent as additional defendants and another application for consequential amendment of the plaint. Learned Munsiff under Ext.P5 order dismissed both the applications. This petition is filed under Article 227 of Constitution of India challenging Ext.P5 order.

2. Learned counsel appearing for the petitioner vehemently argued that proposed defendants are to be impleaded, in view of plea of non-joinder raised by the defendants in the additional written statement and therefore Ext.P1 order is to be quashed. Learned

counsel also argued that defendants have not filed any objection to the applications and in such circumstances, Munsiff should have allowed the applications.

3. On hearing the learned counsel appearing for the petitioner, I do not find any reason to interfere with Ext.P5 order, in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. The suit is one for injunction. What was contended by the defendants was that plaint schedule property belongs to and is in the possession of first defendant and her children. If petitioner is admitting that position then, the suit for injunction may not lie. So long as the petitioner has no case that the proposed defendants are attempting to trespass into the plaint schedule property, there is no necessity for impleading them as additional defendants. A suit for injunction will not be bad for non joinder of the proposed defendants. Hence due to the plea regarding bad for non joinder of necessary parties also the petitions are not to be allowed.

Petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-